



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 28, 1992

Leonard W. Peck, Jr.
Assistant General Counsel
Texas Department of Criminal Justice
Institutional Division
P. O. Box 99
Huntsville, Texas 77342-0099

OR92-173

Dear Mr Peck:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 14760.

The information at issue is personnel application file material collected by the Department of Criminal Justice in connection with an application for employment with the department. The public requestor is the applicant.

You claim that the National Crime Information Center (NCIC) information contained in the file may not be obtained directly from the department but must rather be sought from the Federal Bureau of Investigation pursuant to federal regulations. We agree. *See* Open Records Decision No. 565 (1990) (copy enclosed) (NCIC information must be withheld under section 3(a) of the Open Records Act in conjunction with applicable federal law). You should withhold the NCIC information.

You also claim that certain information contained in the "Applicant Evaluation" in the file is excepted under section 3(a)(11) of the Open Records Act as advice, opinion, or recommendation used in the department's decisional process. We agree that the non-factual information contained in the "Applicant Evaluation" may be withheld under section 3(a)(11). *See* Open Records Decision No. 538 (1990) (copy enclosed). We have marked the portions of that information which may be so withheld.

You assert no exceptions for the balance of the information. To the extent that any of the remaining information might be mandatorily excepted from disclosure to the general public by privacy law in conjunction with section 3(a)(1) of the act, such exception would not apply here, where the requestor is the subject of the information. See section 3B of the Open Records Act (special right of access). You must therefore disclose the remainder of the requested information.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR92-173.

Yours very truly,



William Walker
Assistant Attorney General
Opinion Committee

WMW/lmm

Ref.: ID# 14760
ID# 15036

Enclosure: Open Records Decision Nos. 565, 538

cc: Raymond J. Corsbie, II
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